

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Case No. _____

JESSICA SMITH,

Petitioner, **COMPLAINT**

-against-

PAYPAL, INC.,

Defendant.

-----X

Plaintiff JESSICA SMITH, through her counsel, states the following for her
Complaint:

PRELIMINARY STATEMENT

1. Plaintiff JESSICA SMITH holds a money judgment against a corporation that is not a party to the present action. Here, she seeks an order/judgment, pursuant to N.Y. CPLR 5227 and 5225, directing Defendant PAYPAL, INC. to turnover to Plaintiff's counsel money that PAYPAL, INC. holds belonging to the non-party judgment debtor.

JURISDICTION

2. This Court has diversity jurisdiction over this matter, pursuant to 28 U.S.C. § 1332, because Plaintiff and Defendant have no domicile in the State of New York and the amount in controversy in this action is \$135,000.00 exclusive of interest and costs.

VENUE

3. Pursuant to 28 U.S.C. § 1391(b)(1) and/or (3), the venue chosen is proper.

PARTIES

4. Plaintiff JESSICA SMITH (hereinafter “SMITH”) is an individual who is domiciled in the State of Utah.

5. Defendant PAYPAL, INC. (hereinafter “PAYPAL”) is a corporation that is domiciled in the State of Delaware (where it was legally formed) and the State of California (where its principal place of business is located).

6. PAYPAL is authorized and registered with the State of New York Department of State, Division of Corporations, to conduct business in the State of New York and has an official registered agent for service of process located in the State of New York, County of New York.

FIRST CLAIM

**(TURNOVER ORDER/JUDGMENT UNDER
N.Y. CPLR 5227 AND 5225)**

7. Plaintiff repeats and re-alleges all allegations in this Complaint.

8. On March 10, 2020, the Supreme Court of the State of New York, County of Suffolk, entered a money judgment (under index # 604498/2020) in favor of SMITH against Saga Outerwear, LLC a/k/a Saga Outwear, LLC a/k/a Saga (hereinafter “Saga” or “Judgment Debtor”) for the amount of \$135,000.00 with interest from July 31, 2019.

9. SMITH’s counsel recently learned that PAYPAL had money belonging to Saga.

10. Accordingly, SMITH’s counsel served PAYPAL with an Information

Subpoena with Restraining Notice to Garnishee, pursuant to N.Y. CPLR 5222 and 5224.

11. In response to the Information Subpoena with Restraining Notice to Garnishee, PAYPAL responded that it froze \$64,682.66 for username “amallett@sagaouterwear.com” and account # XXXXXXXXXXXXXXXXXXXX8728.¹

12. N.Y. CPLR 5227 and 5225² allows a judgment creditor to move to direct a garnishee to pay money or debts owed to a judgment debtor directly to the judgment creditor to satisfy an outstanding money judgment.

13. Accordingly, SMITH requests that, pursuant to N.Y. CPLR 5227 and/or 5225, this Court issue an Order/Judgment for the following relief:

A. Directing PAYPAL to turnover to SMITH’s counsel (Peter M. Agulnick, P.C.) all money that PAYPAL currently holds under username “amallett@sagaouterwear.com” and/or account number XXXXXXXXXXXXXXXXXXXX8728;

B. Directing PAYPAL to continue to turnover to SMITH’s counsel all money that in the future may come into PAYPAL’s possession for username “amallett@sagaouterwear.com” and/or account number XXXXXXXXXXXXXXXXXXXX8728 up to the unsatisfied portion of SMITH’s \$135,000.00 judgment (including interest from July 31, 2019); and

C. Directing PAYPAL to turnover to SMITH’s counsel all money that in the future may come into PAYPAL’s possession that is owned by, or owed to, Judgment Debtor Saga up to the unsatisfied portion of SMITH’s \$135,000.00 judgment

¹ The beginning digits of this account number have been redacted Xs to prevent identity theft. Upon request, Plaintiff will provide the full account number to the Court and Defendant.

² According to the late CPLR scholar David D. Siegel, “CPLR 5225 applies if it is property or money that is being sought; CPLR 5227, when it is a debt owed to the judgment debtor. Because the line between ‘money’ and a ‘debt’ is often difficult or impossible to draw, **lawyers base their application on both provisions together**, an acceptable step because procedurally they are just about the same.” David D. Siegel, New York Practice § 510 (4th ed. 2005) (emphasis added).

(including interest from July 31, 2019).

SECOND CLAIM

(COSTS AND DISBURSEMENTS AGAINST DEFENDANT PAYPAL BUT ONLY IF PAYPAL ANSWERS AND OPPOSES THE PRESENT ACTION)

14. Plaintiff repeats and re-alleges all allegations in this Complaint.

15. Both CPLR 5227 and 5225 provide for the award of costs and disbursements against a garnishee, like PAYPAL, if the garnishee answers and disputes the relief requested in a turnover application.

16. Accordingly, if PAYPAL does not answer present action and does not dispute the relief that Plaintiff request in the present action, then Plaintiff SMITH does not request cost or disbursements against PAYPAL. However, if PAYPAL answers and opposes the present action, then Plaintiff SMITH requests costs, disbursements, and such other appropriate relief against PAYPAL.

WHEREFORE, Plaintiff JESSICA SMITH demands an Order/Judgment containing the following relief:

I. On the First Claim:

A. Directing PAYPAL, INC. to turnover to JESSICA SMITH's counsel (Peter M. Agulnick, P.C.) all money that PAYPAL, INC. currently holds under username "amallett@sagaouterwear.com" and/or account number XXXXXXXXXXXXXXXXXXXX8728;

B. Directing PAYPAL, INC. to continue to turnover to JESSICA SMITH's counsel all money that in the future may come into PAYPAL, INC.'s possession for username "amallett@sagaouterwear.com" and/or account number

XXXXXXXXXXXXXXXXXXXX8728 up to the unsatisfied portion of JESSICA SMITH's \$135,000.00 judgment (including interest from July 31, 2019); and

C. Directing PAYPAL, INC. to turnover to JESSICA SMITH's counsel all money that in the future may come into PAYPAL, INC.'s possession that is owned by, or owed to, Judgment Debtor Saga Outerwear, LLC a/k/a Saga Outwear, LLC a/k/a Saga up to the unsatisfied portion of SMITH's \$135,000.00 judgment (including interest from July 31, 2019).

II. On the Second Claim: If PAYPAL, INC. does not answer the present action and does not dispute the relief that Plaintiff SMITH requests, then Plaintiff does not request cost or disbursements against PAYPAL, INC. However, if PAYPAL, INC. answers and opposes the present action, then Plaintiff SMITH requests costs, disbursements, and such other appropriate relief against PAYPAL, INC.

III. Misc.: Such other relief that is appropriate.

Dated: Manhasset, New York
April 28, 2020

Yours, etc.,

PETER M. AGULNICK, P.C.

By: 

Peter M. Agulnick

Attorney for Plaintiff

JESSICA SMITH

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